



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 4001-99
7 January 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: GYSGT [REDACTED], USMC [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 3 Nov 98 and
BCNR ltr BJG Docket No: 8227-98 dtd 27 May 99
w/attachment
(2) Subject's ltr dtd 11 Jun 99 w/attachment
(3) HQMC MMPR-2 memo dtd 18 Aug 99
(4) DFAS-DE/FYCC memo dtd 27 Oct 99
(5) Subject's ltr dtd 13 Dec 99
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, had a prior case in which he requested, in effect, that the applicable naval record be corrected to change the date of rank of his remedial promotion to gunnery sergeant, pay grade E-7, from 1 November 1995 to 1 June 1994, and change the effective date for pay from 16 October 1998 to 1 November 1995. The Board denied this request on 27 May 1999. Copies of his original application and the Board's denial letter are at enclosure (1). He then filed enclosure (2) with this Board again requesting that his effective date for pay be established as 1 November 1995 or, if that date is not approved, the date of his return to active duty from the Temporary Disability Retired List (TDRL). While his reconsideration request at enclosure (2) gives 4 January 1998 as the date of his return to active duty, the actual date is 5 January 1998, the date he cited in his original application at enclosure (1).

2. The Board, consisting of Ms. Gilbert and Madison and Mr. Zs Salman, reviewed Petitioner's allegations of error and injustice on 5 January 2000, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner was placed on the TDRL on 16 April 1994. While on the TDRL, a service member is not eligible to be promoted. He was returned to active duty on 5 January 1998. He then applied to the Enlisted Remedial Promotion Board (ERPB) to be considered for promotion to gunnery sergeant. The message from the Commandant of the Marine Corps at enclosure (2) announced that the ERPB had selected Petitioner for promotion with a date of rank of 1 November 1995 and an effective date of 16 October 1998.

c. In his letter at enclosure (2), Petitioner contended that five personnel officers and five administrative chiefs had reviewed his case, that all but two had concluded the effective date for pay of his promotion should be 1 November 1995, and that these two felt the date should be the date of his return to active duty. He further contended that the message at enclosure (2), paragraphs 1A and B, "...recognized the fact that pay and entitlements are due and directed [Petitioner] to submit a request to [this Board] for authorization of this payment." Paragraphs 1A and B of the message read as follows:

...

A. On the promotion certificate the "to rank as such from" date will be the DOR [date of rank] and the "given under my hand" date will be 16 October 1998.

B. The Marine Corps is not authorized to antedate promotions for periods greater than 13 months for the purpose of effecting pay and allowances. Those Marines with a DOR exceeding 13 months must submit a DD Form 149 to the Board for the [sic] Correction of Naval Records to have the official record corrected to reflect an effective date equal to the DOR and receive appropriate correction to their pay...

d. In correspondence attached as enclosure (3), the Assistant Head, Enlisted Promotions, Promotion Branch, Headquarters Marine Corps (MMPR-2), the office with cognizance over the subject matter of this case, has commented to the effect that Petitioner is not entitled to any back pay as a gunnery sergeant for the time he was on the TDRL. MMPR-2 did not address Petitioner's alternative request for an effective date of promotion as of the date of his return to active duty.

e. In correspondence attached as enclosure (4), the Defense Finance and Accounting Service, Denver Center, has commented to the effect that they cannot recommend either denial or approval of Petitioner's request.

f. By letter at enclosure (5), Petitioner requested that this Board consider his case as soon as possible.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting limited corrective action, specifically, change of the effective date of Petitioner's promotion to 5 January 1998, the date of his return to active duty.

The Board agrees with the advisory opinion from MMPR-2 in finding that the effective date of 1 November 1995 is not warranted, since Petitioner was not eligible for promotion while on the TDRL. While his interpretation of paragraph 1.B of the message announcing his remedial promotion is understandable, a strict reading indicates only that he must apply to this Board to have an effective date equal to his date of rank, not that he is entitled to such relief. However, the Board does find that his promotion should have been effected immediately upon his return to active duty, and that his effective date should be changed accordingly. They note MMPR-2 says nothing to reflect any objection to such a change.

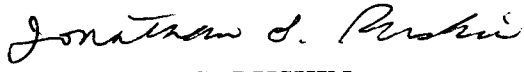
In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:


- a. That Petitioner's naval record be corrected, where appropriate, to show the effective date for pay of his remedial promotion to gunnery sergeant as 5 January 1998, rather than 16 October 1998.
- b. That any material or entries inconsistent with the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- c. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.
- d. That Petitioner's request to show the effective date of his promotion to gunnery sergeant as 1 November 1995 be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4001-99

IN REPLY REFER TO:

1400/3

MMPR-2

18 Aug 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF GUNNERY SERGEANT [REDACTED]
[REDACTED] USMC

1. Gunnery Sergeant [REDACTED] was placed on the Temporary Disability Retired List because of a medical condition. Note that he was on the Temporary Disability Retired List vice the Retired List. His medical condition got better over time and he was allowed to return to active duty. Upon return to active duty he received remedial promotion consideration for all boards he would have been eligible had he been on active duty continuously. He was remedially promoted to his current rank with a date of rank of 1 November 1995 and an effective date of 16 October 1998. Gunnery Sergeant [REDACTED] was not on the Retired List at any time, so he could not have been advanced on the Retired List only the Active Duty List. Therefore, there is no provision within guidelines as set forth in Department of Defense Financial Management Regulation (Volume 7B) for him to receive any back pay for the time he was on the Temporary Disability Retired List. It is recommended that Gunnery Sergeant [REDACTED] request be referred to a Disbursing Officer for a more detailed explanation.

[REDACTED]
Assistant Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps



DEFENSE FINANCE AND ACCOUNTING SERVICE
DENVER CENTER
6760 E. IRVINGTON PLACE
DENVER, COLORADO 80279

4001-99

OCT 27 1999

DFAS-DE/FYCC

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

SUBJECT: Application for Correction of Military Records

We examined the application for correction of military records for GYSGT [REDACTED], Account Number [REDACTED]. Since we are unable to take action to administratively provide the relief sought, we are forwarding it for your consideration.

The applicant is requesting his military records be corrected to show his date of rank and effective date of grade be changed to the grade of E7 effective June 1, 1994 vice November 1, 1995. Based on the information before us we are unable to take any action regarding this correction and it is not within our scope to determine if a member, enlisted or officer should be promoted to a higher grade. Therefore we cannot recommend denial or approval of this claim.

Our address is DFAS-DE/FYCC, 6760 East Irvington Place, Denver, Colorado 80279-7100. Our point of contact is [REDACTED] and she may be reached at DSN 926-4792, or commercial (5) [REDACTED]

[REDACTED]
Chief, Claims Branch
Directorate of Debt and Claims
Management